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TINO X. DO (SBN 221346) 2 SALTZMAN & JOHNSON LAW CORPORATION 1141 Harbor Bay Parkway, Suite 100 3 Alameda, CA 94502104 (510) 906-4710 abevington@sjlawcorp.com 5 tdo@silawcorp.com 6 Attorneys for Plaintiffs 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA 10 CALIFORNIA SERVICE EMPLOYEES HEALTH CASE NO.: 11 & WELFARE TRUST FUND, CHRISTOPHER **12** BOUVIER, Trustee, CHARLES GILCHRIST, **COMPLAINT** Trustee, DAVID HUERTA, Trustee, RAYMOND 13 C. NANN, Trustee, MARK SHARWOOD, Trustee, and LARRY T. SMITH, Trustee, 14 15 Plaintiffs, **16** VS. 17 BLACKSTONE CONSULTING, INC., a California 18 corporation, 19 Defendant. 20 21 **PARTIES** 22 Plaintiff California Service Employees Health & Welfare Trust Fund ("the Trust") is a 23 multiemployer joint labor-management welfare fund established pursuant to Section 302(c) of the 24 Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186(c). The Trust maintains an 25 administrative office in San Francisco, California. Its purpose is to provide health and welfare and 26 related benefits to the eligible employees of employers who contribute to the Trust pursuant to 27 various consecutive collective bargaining agreements ("Bargaining Agreements") between local 28 unions affiliated with the Service Employees International Union ("SEIU"). **COMPLAINT**

Case No.

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- 2. Plaintiffs Christopher Bouvier, Charles Gilchrist, David Huerta, Raymond C. Nann, Mark Sharwood, and Larry T. Smith are Trustees of the Trust. Trustees are fiduciaries with respect to the Trust as defined in 3(21)(A) of Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(21)(A), and are collectively the "plan sponsor" within the meaning of 3(16)(B)(iii) of ERISA, 29 U.S.C. §§ 1002(16)(B)(iii).
- 3. Defendant Blackstone Consulting, Inc., a California corporation, ("Defendant") is a corporation registered to do business in the State of California with its principal place of business located in in Los Angeles, California. Defendant is principally engaged in the business of providing services in environmental, security, facilities maintenance, staffing and food service management. The business of Defendant affects commerce within the meaning of Section 301 of the LMRA, 29 U.S.C. § 185.

JURISDICTION

- 4. Jurisdiction exists in this Court over the claims asserted by the Plaintiffs by virtue of ERISA Section 502, 29 U.S.C. § 1132, in that the Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices that violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.
- 5. Jurisdiction exists in this Court over all the claims by virtue of Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, in that the Plaintiffs seek to enforce the terms and conditions of the Bargaining Agreements between the employer and a labor organization.
- 6. To the extent jurisdiction over any claim does not exist under ERISA and/or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 28 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction and it would further judicial economy, convenience, fairness and comity to exercise jurisdiction over the claims.

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1 **VENUE** Venue exists in this Court with respect to the claims under ERISA Section 502(e)(2), 2 3 29 U.S.C. § 1132(e)(2), because the Trust is administered in this district. 4 INTRADISTRICT ASSIGNMENT 5 The basis for assignment of this action to this Court's San Francisco and Oakland Division is that a substantial part of the events and omissions giving rise to Plaintiffs' claims 6 7 occurred in the City and County of San Francisco, where the Trust is administered. 8 APPLICABLE LAW 9 Section 515 of ERISA, 29 U.S.C. § 1145, requires that employers who are obligated to make contributions to a multiemployer plan do so in accordance with the terms of the Bargaining 10 11 Agreement. 12 10. ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2), provides as follows: 13 In any action under this title by a fiduciary for or on behalf of a plan to enforce 14 Section 515 in which a judgment in favor of the plan is awarded, the court shall 15 award the plan: 16 (A) the unpaid contributions, 17 (B) interest on the unpaid contributions, 18 (C) an amount equal to the greater of: 19 (i) interest on the unpaid contributions, or 20 liquidated damages provided for under the plan in an amount (ii) 21 not in excess of 20 percent (or such higher percentage as 22 may be permitted under Federal or State law) of the amount 23 determined by the court under subparagraph (A), reasonable attorney's fees and costs of the action, to be paid by the 24 (D) 25 defendant, and such other legal or equitable relief as the court deems appropriate. 26 (E) 27 11. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a civil action by the 28 Trustees as ERISA fiduciaries: - 3 -

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1 2	terms of the plan, or	practice which violates any provision of this title or the		
3	(R) to obtain other appro	priate equitable relief		
4 5	(ii) to enforce an	ch violations, or y provision of this title or the terms of the plan.		
6	12. ERISA Section 209, 29 USC § 1059, recordkeeping and reporting requirements, state			
7	7 in relevant part:			
8 9 10	9 accordance with reg with respect to each	vided by paragraph (2) every employer shall, in alations prescribed by the Secretary, maintain records of his employees sufficient to determine the benefits ecome due to such employees.		
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12	employer's relevant books and records under the terms of the Trust Agreements. <i>Central States</i> ,			
13	13 Southeast and Southwest Areas Pension Fi	Southeast and Southwest Areas Pension Fund v Central Transport, Inc., 472 US 559 (1985), reh's		
14	14 denied 473 U.S. 926.			
15	15	<u>FACTS</u>		
16	16 14. At all times relevant to this Co	mplaint, Defendant was a party and bound by a		
17	collective bargaining agreement with Service Employees International Union – United Service			
18	18 Workers West ("the Union") covering Def	Workers West ("the Union") covering Defendant's employees ("the Bargaining Agreement").		
19	19 The Bargaining Agreement required that D	efendant contribute to the Trust at specified rates per		
20	month on behalf of its eligible employees.			
21	21 15. As an employer participating in	n the Trust, and pursuant to the terms of its Bargaining		
22	22 Agreement, Defendant is bound by the Agr	reement and Declaration of Trust ("Trust Agreement")		
23	23 establishing the Trust, the terms of the Tru	st's Plan Documents, and the rules, regulations and		
24	24 policies adopted by the Trustees under the	authority of the Trust Agreement.		
25	25 16. Defendant's contractual duty u	nder the Bargaining Agreement requires it to timely		
26	26 make payment in full of the required contri	butions to the Trust according to its terms or the terms		
27	27 of the Bargaining Agreement, under ERISA	A Section 515, 29 U.S.C. § 1145.		
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- Agreement, and under their Bargaining Agreements, contributing employers were required to submit complete monthly remittance reports of all eligible employees covered by the Bargaining Agreement along with contributions owed, to the Trust on or before the 15th day of each month following the month in which the covered work was performed. Article IV, Section 4 of the Trust Agreement provided that an employer may be compelled by legal proceeding to prepare, submit and file with the Trust proper reports for any period for which the employer failed to file, and that until the proper report is filed by the employer and accepted by the Trust, the amount due from the employer shall be deemed to be not less than the amount due pursuant to the most recent complete report filed by the employer.
- 18. At all times relevant to this action, under Article IV, Sections 5 and 6(a) of the Trust Agreement, contributions received by the Trust after the 20th day of the month following the month in which the covered work was performed were deemed delinquent.
- 19. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B), Article IV, Section 6(c) of the Trust Agreement provided that delinquent contributions shall accrue interest at the rate of ten percent (10%) simple interest per annum from the due date until paid.
- 20. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(C), 29 U.S.C. § 1132(g)(2)(C), Article IV, Section 6(b) of the Trust Agreement provided that after the filing of a lawsuit, the employer shall be obligated to pay liquidated damages in an amount equal to the greater of: (1) 20% of the amount of the delinquent contributions, or (2) interest on the delinquent contributions as calculated under Article IV, Section 6(c) of the Trust Agreement.
- 21. At all times relevant to this action, in accordance with ERISA Section 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E), Article IV, Section 8 of the Trust Agreement provided that in the event of a lawsuit, in addition to the delinquent contributions, interest and liquidated damages due to the Trust, the delinquent contributing employer shall pay to the Trust all attorneys' fees incurred in the litigation and any audit fees incurred in the audit and in connection with the litigation.

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22. In or about December 2019, an audit was completed of Defendant's payroll records
for the period June 1, 2015 through June 30, 2019, which revealed omissions by Defendant in the
payment of contributions due by Defendant to the Trust during the audit period. In or about June
2020, the audit was revised and finalized, resulting in Defendant's owing delinquent contributions
to the Trust in the amount of \$15,904.83 in underpayments. Simple interest at 10% per annum on
the unpaid contribution amount calculated through September 8, 2020 totals \$3,360.63 and
continues to accrue at the rate of \$4.36 per day. Liquidated damages are owed at 20% of the
unpaid audit amount totaling at least \$3,180.97, or interest, whichever is greater. Defendant is
therefore in breach of the CBA in effect during the above period and thereby breached the terms of
the Trust Agreement to which Defendant is bound, and is therefore liable to the Trust for payment
of contributions found to be due on audit, interest, an amount equal to the greater of 20%
liquidated damages or interest, reasonable attorney's fees and costs, and audit fees.
22 Defendant also undermaid its January 2020 walfare contributions by \$4 777 25 by

- 23. Defendant also underpaid its January 2020 welfare contributions by \$4,777.25 by improperly applying an opt-out credit for an employee for the period August 2019 through December 2018 hours worked.
- 24. During the period January 2020 to the present, itemized demands have been made upon Defendant for payment of the above-described delinquent contributions, pre-litigation liquidated damages and interest. Despite the demands, Defendant has refused and continues to refuse to pay the amounts owed.

FIRST CAUSE OF ACTION

For Payment of Delinquent Contributions, Interest, Liquidated Damages, **Attorneys' Fees and Costs Against Defendant**

- 25. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26, above as though fully set forth herein.
- 26. Defendant as a party to the Bargaining Agreement agreed to be bound by the terms thereof and by the Terms of the Trust Agreement and Plan document.
- 27. By failing to make the required payments to the Trust, Defendant breached the Bargaining Agreement and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

28. As a result of the delinquencies alleged herein, Defendant's employees covered by the Bargaining Agreement lost eligibility for benefits, and Defendant is therefore liable for their lost benefits.

- 29. Therefore, Defendant is liable for payment of delinquent contributions due and owing Plaintiff Trust, for interest, liquidated damages, costs, attorneys' fees and accountants' fees as provided for under ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2), for interest and liquidated damages due on late-paid contributions, and for the amount of any benefits lost by the Trust's participants or beneficiaries as a result of Defendant's delinquency, according to proof.
- 30. Defendant is also liable for payment of any additional delinquent contributions that may be revealed by audit or during discovery or investigation of this matter, and any additional contributions that may become delinquent prior to judgment, plus interest and liquidated damages on any such amounts.
- 31. Plaintiffs are without adequate remedy at law and the Trust and its participants and beneficiaries will suffer continuing and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the Bargaining Agreement, and the Trust Agreement, including but not limited to the submission of delinquent monthly remittance reports and the payment of benefits lost by its employees due to Defendant's delinquency; and to pay all contributions, interest, liquidated damages, costs, attorneys' fees and accountants' fees determined to be due Plaintiff Trust.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

- 1. For judgment against Defendant, in favor of the Plaintiffs, in an amount equal to at least:
- (a) All unpaid contributions due at time of Judgment, according to proof, including those specified above as well as any other contributions determined as due by audit or otherwise pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

1	(b) Interest on all unpaid contributions at the rates set in accordance with the
2	Bargaining Agreement, the Trust Agreement, and ERISA Section 502(g)(2)(B), 29 U.S.C. §
3	1132(g)(2)(B).
4	(c) Liquidated damages in an amount equal to the greater of
5	(i) Interest on the unpaid contributions, or
6	(ii) Liquidated damages provided for under the Bargaining Agreement
7	on the aforementioned unpaid contributions in accordance with the
8	Bargaining Agreement, the Trust Agreement and ERISA Section
9	502(g)(2)(C), 29 U.S.C. § 1132(g)(2)(C).
10	(d) Liquidated damages and interest at the rates set in accordance with the
11	Bargaining Agreement and the Trust Agreement on any contributions paid late to the Trust.
12	(e) Plaintiffs' reasonable attorneys' fees and costs of this action in accordance
13	with ERISA Section 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D); reasonable attorneys' fees and
14	costs in accordance with the Trust Agreement and in accordance with LMRA Section 301, 29
15	U.S.C. § 185;
16	2 That the Court retain jurisdiction of this case pending compliance with its orders; and
17	3. For such other and further relief as the Court may deem just and proper.
18	Date: September 8, 2020. SALTZMAN & JOHNSON LAW CORPORATION
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20	By: /s/ Tino X. Do
21	Attorneys for Plaintiffs
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